

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jonah Goger	Team: Team # 4	CCRB Case #: 200301217	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 02/15/2003 1:00 PM	Location of Incident: c/o 60th St & First Ave., Manhattan.	Precinct: 19	18 Mo. SOL 8/15/2004	EO SOL 8/15/2004	
Date/Time CV Reported Sun, 02/16/2003 11:07 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sun, 02/16/2003 11:07 PM		
<b>Complainant/Victim</b>	<b>Type</b>	<b>Home Address</b>			
<b>Witness(es)</b>	<b>Home Address</b>				
<b>Subject Officer(s)</b>	<b>Shield</b>	<b>TaxID</b>	<b>Command</b>		
1. POM Christop Mcnerney	11264	928764	019 PCT		
2. LT David Beary	00000	897008	PB EMD		
<b>Witness Officer(s)</b>	<b>Shield No</b>	<b>Tax No</b>	<b>Cmd Name</b>		
1. POF Virginia Hennessy	00309	901682	019 PCT		
2. SGT Kathy Fortier	01684	892339	019 PCT		
<b>Officer(s)</b>	<b>Allegation</b>	<b>Investigator Recommendation</b>			
A.POM Christop Mcnerney	Force: PO Christopher Mcnerney used physical force against § 87(2)(b)				
B.LT David Beary	Discourtesy: Lt. David Beary spoke rudely to § 87(2)(b)				

## Synopsis

This complaint stems from the anti-war rally that took place on 2/15/03, at the United Nations Headquarters, which received extensive press coverage. As such the case was deemed sensitive and has been appearing on the agency's sensitive case list.

On 2/16/03, the day after the rally, § 87(2)(b) complained via E-mail to CCRB that a PO McNerney (identified by shield number, name plate and summons issued) used excessive force in apprehending and arresting her for § 87(2)(b). § 87(2)(b)

§ 87(2)(b) also complained that the 19<sup>th</sup> pct. desk officer, Lt. Beary, spoke rudely to her when she was brought in. § 87(2)(g)

## Summary of Complaint

§ 87(2)(b) came to CCRB for a formal interview on 3/11/03, and provided the following narrative:

On 2/11, four days before the rally, § 87(2)(b) fell on some ice while walking and incurred bone bruises and minor fractures to her ankle and elbow. She was fitted, at § 87(2)(b), with a soft cast and boot for her foot, and a bandage and sling for her arm. § 87(2)(b) was aware that the injuries hindered her mobility, but she was determined to attend the war protest anyway. She intended to meet up with her mother (and members of a union her mother belongs to) at 62nd St. and First Ave.

§ 87(2)(b) was initially walking from Grand Central Station toward the rendezvous site with some other friends, but her injuries were preventing her from moving quickly. She did not want to delay her friends, so she insisted they go on without her.

§ 87(2)(b) continued northbound alone up Third Ave., the side streets of which were blocked by police barricades (she referred to this as the "Berlin Wall.") She wished to move further east, but police officers kept telling the crowd to "keep moving" north. It was "very slow," and there were "lots of people." Finally, at about 59th St., § 87(2)(b) pleaded with officers to allow her through, and they did so. She was able to cross east and reach Second Ave., but here again she was forced to continue north. Finally, at East 63<sup>rd</sup> St., there was a large mass of people, and "in the confusion (she) was able to filter through over to First Avenue."

Most of the protesters there were being restricted to barricaded "pens" between the cross streets. Nonetheless, § 87(2)(b) was able to gradually work her way from the pen between 62nd and 63rd Streets to the pen between 60th and 61st, because somewhere along the way a stranger told her that the UNITE faction was further down. § 87(2)(b) was eager to move south as quickly as possible.

As § 87(2)(b) pushed southbound toward 60<sup>th</sup> St., she noticed a police officer, later known to be PO Christopher McNerney, standing at the southwest corner of the pen (the northwest corner of the intersection of First Ave. and 60th St.) Protesters were entreating PO McNerney to let them proceed further south, but the officer loudly informed them that if they wanted to leave the pen, they would only be permitted westbound toward Second Ave. No one was allowed further south at that point.

Sensing that she would have little luck persuading PO McNerney, § 87(2)(b) moved to the other corner of the intersection and managed to push a barricade out of the way. "I decided to see if I could sneak in and go to the next pen," she said.

§ 87(2)(b) began to cross toward the 59/60 St. pen when PO McNerney grabbed her around the upper arms from behind and turned her back toward the pen she had just left. He told her, "You gotta go back in the pen."

§ 87(2)(b) refused because she "didn't want to go back in," but the officer insisted. § 87(2)(b) said, "No, I'm not going," and the officer replied, "Okay, then you're under arrest." He pulled the complainant's right arm behind her back and then reached for her left elbow. § 87(2)(b) told him that this arm was injured, but the officer ignored her and pulled the arm back forcefully. § 87(2)(b) then proceeded to scream "for a good while, until I could catch my breath."

PO McNerney led § 87(2)(b) westward and out of the intersection. A short time later, § 87(2)(b) was taken by patrol car to the 19th precinct, where she was issued a summons. She claimed that

when she attempted to give her own account to the officer at the desk, he told her to “shut up.” He “didn’t want to hear what I had to say.” He was a white male, but the complainant could recall no other physical characteristics.

§ 87(2)(b) began her CCRB interview by delivering a resume/autobiography § 87(2)(g). She repeatedly used analogies to suggest that the police, in general and during the protest in particular, behaved like Nazis. § 87(2)(g) she did volunteer that she was attempting to “sneak” from one pen to the next without being detected by PO McNerney.

§ 87(2)(b) did not seek or receive medical attention from the police at any time. She claimed not to know if PO McNerney’s had aggravated her pre-existing injuries.

She also said that she had been contacted by a potential witness named § 87(2)(b) who had “video taped” the incident. She provided a phone number for him.

### **Results of Investigation**

#### **Officer identification**

§ 87(2)(b) identified **PO Christopher McNerney** by name, and when interviewed, she brought with her the summons (encl. 9) he issued her. PO Hennessey was identified through a records request (encl. 11; physical description), and readily conceded to being the female officer who escorted the subject and complainant to the stationhouse. In turn, PO Hennessey identified Sgt. Fortier by name.

The Command Log and Roll Call show **Lt. David Beary** (male white) to have been working the 19<sup>th</sup> pct. desk at the time of the alleged exchange at the stationhouse. The lieutenant could not recall the incident.

#### **Witness**

§ 87(2)(b) the videographer, was interviewed over the phone on 5/12/03 (encl. 5). He claimed to have observed little if any physical interaction between § 87(2)(b) and any police officer other than what was captured on video.

Just before § 87(2)(b) was apprehended, § 87(2)(b) saw that the subject, PO McNerney, was being harangued by an elderly female protester (not the complainant). The woman was apparently tired of being confined, and she was screaming at PO McNerney, calling him a “fascist pig,” etc. PO McNerney clearly heard her, but did not visibly react. He said nothing. Then § 87(2)(b) noticed that the officer rose on his toes and looked toward the other side of the interaction before moving in that direction. Although § 87(2)(b) was not able to clearly observe his movements, he eventually realized that this was almost definitely when the officer spotted § 87(2)(b) trying to move south from one pen to the other.

#### **Officers**

**PO Christopher McNerney** was interviewed at CCRB on 4/15/03 (encl. 6). He stated that he and other officers, whom he did not know, were stationed at the intersection in question, charged with keeping order. When protesters wanted to leave the pen, PO McNerney informed them that they would only be allowed westbound. For the most part, people complied peacefully.

Then a woman later known to be § 87(2)(b) pushed one of the barriers herself in a seeming attempt to move southbound rather than west, which the officers had been ordered to prohibit. PO McNerney approached and physically stopped § 87(2)(b) by holding her shoulder. He told her she could only leave by moving westbound, but she refused, insisting that she be allowed to continue south. The officer then ordered her back inside the pen, but she refused again, struggling to go south. PO McNerney was trying to hold her, but § 87(2)(b) began swinging her arms to free herself. The officer came to the realization that he would have to place her under arrest. He put her in an “arm lock,” straightening her arm and then curving it up behind her. PO McNerney stipulated that § 87(2)(b)

informed him that she was wearing a cast at some point subsequent to the apprehension, but he was unaware of this prior to handcuffing her. She did *not* complain of pain or injury.

PO McNerney and an unknown female officer rode with § 87(2)(b) to the 19<sup>th</sup> pct., where she was issued a summons. The officer denied that the force he used was excessive.

**PO Virginia Hennessy** was interviewed at CCRB on 8/6/03 (encl. 7). She stated that she was with several officers – none of whom she could identify -- on the south side of the 60<sup>th</sup> St. and First Avenue intersection “trying to keep the protesters in the pens.” She described the scene as generally chaotic and occasionally bordering on pandemonium. At some point, a Sgt. Kathy Fortier got her attention and pointed out PO McNerney, who was holding a handcuffed § 87(2)(b) on the other side of the intersection. The sergeant instructed PO Hennessy to ride with them to the stationhouse.

Virtually the whole time, § 87(2)(b) was screaming that she was innocent, that what was happening to her was wrong, etc. She was being belligerent. Meanwhile, PO McNerney was actually “nice” to her, and much more conciliatory than necessary under the circumstances. He used no excessive force whatsoever that PO Hennessy observed. She saw nothing of the interaction between PO McNerney and § 87(2)(b) before the arrest.

The officer never heard § 87(2)(b) complain of pain or injury.

**Sgt. Kathy Fortier** was interviewed at CCRB on 9/9/03. She related that she was assigned to crowd control on the west side of First Avenue between 59<sup>th</sup> and 60<sup>th</sup> Streets. She did not see what precipitated the interaction, noticing § 87(2)(b) only after PO McNerney was handcuffing her. When the sergeant approached, PO McNerney explained to her that the woman had repeatedly attempted to cross the intersection in defiance of lawful orders.

§ 87(2)(b) was seemingly indignant and uncooperative as PO McNerney attempted to escort her westbound toward a waiting patrol car. She was struggling one second and “limp” the next, making the subject officer practically carry her out of the chaotic intersection. Sgt. Fortier said that she believed PO McNerney showed great restraint and used perfectly proper force throughout. She assigned another officer nearby, PO Hennessy, to ride with them to the stationhouse solely because § 87(2)(b) was struggling and complaining. The sergeant volunteered that she guessed § 87(2)(b) might make a complaint, and she wanted to have a third party witness for PO McNerney’s benefit.

**Lt. David Beary**, the desk officer at the 19<sup>th</sup> pct. stationhouse on 2/15/03, was interviewed on 12/3/03. He had no memory of § 87(2)(b) or the alleged interaction at the stationhouse.

### Other

The summons issued to § 87(2)(b) (encl. 9) was dismissed, according to the New York County Criminal Court Clerk’s office, in April, 2003. On 4/23/03, § 87(2)(b) acquired a copy of § 87(2)(b) videotape and she hand-delivered it to the CCRB (see IA’s, encl. 10 (4/25/03)). The tape (also enclosed in the file folder) shows § 87(2)(b) in police custody at the rally. She is handcuffed and complaining loudly. PO McNerney is present and holding her, but he is not heard speaking. There is no footage of the interaction that precipitated the arrest. There is nothing remotely incriminating in terms of visual evidence against the subject officer.

### Conclusions and Recommendations

§ 87(2)(b) said that she knew the protest might be dangerous for a woman with the injuries she had suffered days before, but she so believed in the rally’s importance that she insisted upon attending. Even after witnessing the chaos created by the unexpected masses, § 87(2)(b) was undeterred, and kept fighting her way toward the rally site. She witnessed scores of people screaming and carrying on, “very upset” at being denied entrance to certain streets and avenues. Twice before the exchange with PO McNerney, she knowingly crossed through barricaded streets, once with the permission of officers, and once by slipping through “in the confusion.” Then, when attempting once more to do what tens of thousands of other civilians were trying to do -- clamoring to do, screaming to do, and yet being prevented from doing by lawful order of the police -- she was stopped by PO McNerney. She was not arrested at this point, but simply directed to return from whence she had come. At this point, § 87(2)(b) -- who had

knowingly violated § 87(2)(g) barricade system -- simply refused to return. The officer, by her own admission, did nothing more than order her back, and she flatly refused. Shortly thereafter, she was arrested.

§ 87(2)(b) began her interview with a brief autobiography: “Before I retired, I used to work § 87(2)(b) ... Both (of my children) attended public school here, and have done very well... We love the city, and we believe dearly and deeply in our Constitution and our civil rights, and our right to expression.”

§ 87(2)(g)  
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§ 87(2)(g)

The complainant repeatedly cited during her interview that she was a) injured and b) “just” trying to meet other people, § 87(2)(g)

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§ 87(2)(b) also claimed that PO McNerney was excessively rough § 87(2)(g)  
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In PD v. Torres (OATH Index No. 994/91), the ALJ noted that “resistance to an arrest raises the threshold level of reasonable force which may be used to effectuate it.” § 87(2)(g)

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§ 87(2)(g) Lt. Beary, the presumed subject, could not recall the incident, § 87(2)(g) By her own admission, § 87(2)(b) was “screaming” and complaining, etc., for an extended period subsequent to her apprehension, § 87(2)(g)

§ 87(2)(g)  
Lt. Beary has no previous CCRB history whatsoever. § 87(2)(g)  
§ 87(2)(g)

Investigator:	Date:
Supervisor:	Date:
Reviewed by:	Date:
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